

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§ CASE NO. 23-90085-11
	§ JOINTLY ADMINISTERED SORRENTO
SORRENTO THERAPEUTICS, INC.,	§ HOUSTON, TEXAS
ET AL,	§ MONDAY,
	§ MAY 22, 2023
DEBTORS.	§ 4:00 P.M. TO 5:19 P.M.

MOTIONS HEARING

BEFORE THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE

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1 HOUSTON, TEXAS; MONDAY, MAY 22, 2023; 4:00 P.M.

2 THE COURT: Good afternoon, everyone. This is Judge
3 Jones, the time is 4:00 o'clock Central, today is May 22,
4 2023. This is the docket for Houston, Texas. On the 4:00
5 o'clock docket we have Case Number 23-90085, the jointly
6 administered cases under Sorrento Therapeutics, Inc.

7 Folks, please don't forget to record your electronic
8 appearance. If this is the first time for you or it's been a
9 while, that's a quick trip to the website, a couple of mouse
10 clicks, you can do that at any time prior to the conclusion of
11 the hearing. But that is how we note your appearance.

12 Again, I have activated the hand-raising feature.
13 If you know you're going to be speaking, if you would go ahead
14 and hit five star for me. You only have to do that once but
15 it is -- it will let me know that you do intend to speak, and
16 you can change your mind at any time. The first time that you
17 do speak if you would please state your name and who you
18 represent. It really does serve as a good point of reference
19 in the event that a transcript request is made.

20 And finally we are recording this afternoon using
21 CourtSpeak. We will have the audio up on the docket shortly
22 after the conclusion of the hearing this afternoon.

23 All right. Mr. Kirby, where are we?

24 MR. KIRBY: Well, Your Honor -- can Your Honor hear
25 me?

1 THE COURT: Loud and clear, thank you.

2 MR. KIRBY: All right. Dean Kirby for Dr. Chen and
3 Dr. Miao, the moving parties. Your Honor, these motions are
4 decided on the facts of each case and here we have a State
5 Court lawsuit which has been going on for almost five years,
6 was scheduled for trial on May 12, was derailed by the
7 automatic stay. Trial date's then vacated and when they did
8 that they scheduled a status conference for August 7.

9 There's no trial date and although no one's stayed
10 from showing up at the next status conference, the Court can't
11 set a new trial date on August 7 at the status conference if
12 the stay remains in effect. If our motion is granted and the
13 Superior Court can set a new trial date, and the way that
14 court calendars work that's going to be months down the road.

15 We presented evidence that discovery is
16 substantially completed meaning specifically that there's no
17 outstanding discovery that the Debtor has to respond to,
18 summary judgment motions have all been decided, and there are
19 no pending motions at all that the Debtor has to respond to.
20 The case is ready for trial. The Debtor has not presented a
21 declaration and has not designated a witness that could
22 contradict that.

23 So basically the main effect of granting this motion
24 would be to allow my clients to get back in line in the
25 Superior Court to have their case set for trial next year.

1 Given the posture of the litigation there's no burden on
2 management of the Debtor during these next few months, and I
3 have not heard the Debtor admit that this Chapter 11 case
4 isn't well down the road to being resolved.

5 Now the Court knows that the Bankruptcy Code has
6 provisions designed to see that the stay motions are decided
7 relatively promptly. There has to be a hearing within 30 days
8 after the motion's filed. Unless the Court within that period
9 orders that the stay continue in effect, when the Court wanted
10 to reschedule this hearing, I emailed the case administrator
11 to let the Court know that my clients would and did waive the
12 30-day requirement so that this hearing could take place.

13 So at this hearing, Section 362(a)(1) says if the
14 Court shall order the stay continue in effect pending the
15 conclusion of the final hearing, if there is, and I'm quoting,
16 "a reasonable likelihood that the party opposing relief from
17 such stay will prevail at the conclusion of such final
18 hearing". Now has the Debtor, which has the burden of proof
19 on all the issues here, made that showing? If not, then the
20 Court ought to grant the motion now.

21 The Debtor hasn't made the showing that it has a
22 reasonable likelihood of prevailing. As they said, there's
23 evidence only on one side that the burden of continuing this
24 litigation over the next few months is slight. The Debtor's
25 not required to respond to further discovery, no motions. The

1 Debtor could have offered the declaration of one of the
2 lawyers in the California lawsuit to refute, that but did not
3 do so. The Debtors asserted that having this case reset for
4 trial now would blow up the Debtor's litigation budget which
5 totals \$13.2 million in professional fees through the end of
6 June.

7 Well, nothing's going to happen through the end of
8 June in this case at all. There's no declaration and there's
9 no competent witness designated who estimate the amount of the
10 fees that will be incurred in these next few months. And the
11 only evidence that the Debtor has apparently prepared to
12 present, now or later, is that there's going to be very slight
13 fees. And with no motions, no depositions or interrogatories
14 to answer, how's the Debtor's management going to be
15 distracted by this lawsuit during the next few months. All
16 they have to do the Debtor doesn't say.

17 And finally, when you ask the Court to weigh
18 whatever clearly slight inconvenience and cost the Debtor
19 could possibly incur against the harm in my clients, Dr. Chen
20 and Dr. Miao. Although they want to liquidate a general
21 unsecured claim in this case, something I assume the Debtor
22 wants to do, their lawsuit primarily concerns Concordance -- I
23 always want to say Concordance, but it's Concourtis, a non-
24 bankrupt subsidiary of the Debtor. Does Concourtis really own
25 the intellectual property that my clients conveyed with? What

1 about my clients' damages claim against Paul Hastings?

2 And the balance of harm here clearly weighs in favor
3 of my clients, and there's nothing that the Debtor has even
4 offered to prove to the contrary. So this is a very
5 appropriate case to grant this motion now at this stage.

6 THE COURT: So, Mr. Kirby, just a couple of
7 observations. Number one, as we sit here today there's been
8 no evidence on either side. And second of all, I take a
9 little issue with the fact that you say that the Debtors have
10 identified no witness, when I look at the docket and in
11 accordance with the rules of the Southern District of Texas,
12 there is a witness and exhibit list on file with a witness
13 identified. So I'm sort of curious as to how you came to make
14 that statement to me.

15 MR. KIRBY: Well, the only witness designated is the
16 Debtor's chief reorganization officer.

17 THE COURT: But you told me --

18 MR. KIRBY: How can the Debtor --

19 THE COURT: -- you told me there was no witness.
20 That's what you told me.

21 MR. KIRBY: I don't believe --

22 THE COURT: All right.

23 MR. KIRBY: -- that that's what I said, but there's
24 no witness --

25 THE COURT: The Record is -- the Record is what the

1 Record is. I'll take that as your opening statement. I can't
2 really believe, but so that you're clear, I don't take
3 declarations as evidence attached to motions. That's not
4 evidence.

5 So, Ms. Reckler, did you want to make any opening
6 comments?

7 MS. QUARTAROLO: Actually, Your Honor, it's Amy
8 Quartarolo on behalf of the Debtors.

9 THE COURT: My apologies. Any opening statements?

10 MS. QUARTAROLO: So, Your Honor, we are prepared to
11 move forward with an evidentiary hearing today. I believe we
12 had attempted to discuss with Mr. Kirby in advance of the
13 hearing and he indicated that he viewed today as a preliminary
14 hearing. We believe that today -- I mean we're prepared to
15 move forward on a final hearing basis and are happy to put on
16 evidence.

17 THE COURT: Okay. Mr. Kirby?

18 MR. KIRBY: Well, Your Honor, I have my witness
19 here, Mr. Riney, and I also have Dr. Chen.

20 THE COURT: Okay. So you're prepared --

21 MR. KIRBY: -- and I don't --

22 THE COURT: -- you're prepared to go forward.

23 MR. KIRBY: Yes.

24 THE COURT: All right. Who's your first witness?

25 MR. KIRBY: I'd like to call Michael H. Riney, he's

1 here I believe on video.

2 THE COURT: All right. Mr. Riney, can you hear me?
3 Just confirm for me.

4 MR. RINEY: (No audible response.)

5 THE COURT: So to Mr. Riney and Mr. Chen, had you
6 hit five star on your telephone? Because I can see you
7 talking, but I can't hear you.

8 (Pause in the proceedings.)

9 THE COURT: You only need to do it once. In fact,
10 if you do it twice it actually makes the circle. I think --
11 there you are. How about now, Mr. Riney?

12 MR. RINEY: Hello, Your Honor. Can you hear me now?

13 THE COURT: Loud and clear. Thank you. If you
14 would please, sir, if you'd raise your right hand.

15 (Witness sworn.)

16 THE COURT: All right. Thank you.

17 Mr. Kirby?

18 DIRECT EXAMINATION

19 BY MR. KIRBY:

20 Q Mr. Riney, could you tell the Court what your involvement
21 is in the Sorrento lawsuit that's now pending in the Superior
22 Court of California?

23 A I represent Dr. David Miao who is the primary financial
24 instant party in the litigation between Sorrento and Drs. Miao
25 and Chen. Dr. Chen, sitting to my left, is represented by

1 Matt Mahoney who's also on the call. Mr. Chen (glitch in the
2 audio) is closer to my offices, so that's why he's here.

3 Q Mr. Riney, as of the date that the bankruptcy petition
4 was filed by Sorrento Therapeutics, that would have been I
5 believe February 11, were there -- was there any outstanding
6 discovery that the Debtor was required to respond to?

7 A I don't believe there was anything pending from Sorrento
8 at all. There was an issue with respect to some information
9 required from my clients to Sorrento or Concorthis, but not the
10 other way around.

11 Q And at the time that the bankruptcy petition was filed
12 was there -- were there any motions pending that the Debtor
13 was required to respond to?

14 A Not the best of my recollection.

15 Q And at the time the bankruptcy petition was filed was
16 there a trial date scheduled?

17 A There had been a trial date scheduled in January of 2023,
18 that was essentially by agreement of the parties continued to
19 allow for mediation. So the cutoff date was May 2022, the
20 trial date was in January 2022 (sic) but it was in December
21 that the judge continued the trial date I think till May to
22 allow for mediation.

23 Q And after the bankruptcy petition was filed, Mr. Riney,
24 what occurred in the Superior Court litigation?

25 A Well, nothing other than we went to a status conference

1 and advised Judge Sturgeon of the bankruptcy filing.

2 Q And was that at a status conference?

3 A It was.

4 Q And did Judge Sturgess -- Sturgeon take any action as a
5 result?

6 A Other than set another status conference for August 7 I
7 believe which followed Mr. Ellison's comments to the effect
8 that his client is just going be out of bankruptcy by July
9 2023. I think June or July, if I remember correctly. The
10 judge set a follow-up status conference for August 7. So
11 we're expected in the courtroom, so. I think August 7, 2023.

12 Q Mr. Riney, you're familiar with how the calendar works in
13 the San Diego County Superior Court, are you not?

14 A I've been practicing here for almost 40 years now.

15 Q So what do you anticipate, based on your experience, a
16 new trial date might be?

17 A Well, Judge Sturgeon, who is an excellent judge, and I
18 say that whether or not this being recorded, but he's a very
19 good judge with a -- a typical Superior Court judge in
20 San Diego has about 1,000 cases on their docket. Obviously
21 they don't open a file, but when you have a case of this
22 nature with a lengthy file, it's hard to get, you know, an
23 open window of time. I'm sure the Court can appreciate that.

24 I would not anticipate, if we went and saw the judge
25 on August 7, 2023, when an order allowing Judge Sturgeon to

1 reset the trial, that this (glitch in the audio) trial until,
2 at the very earliest, the end of this year or some time in
3 2024. But right now though of course we get in line, and
4 that's kind of the problem.

5 MR. KIRBY: I have nothing further for Mr. Riney.

6 THE COURT: Thank you. Mr. Riney, have you filed a
7 proof of claim in the bankruptcy case?

8 THE WITNESS: Me personally?

9 THE COURT: For your client.

10 THE WITNESS: Or have -- I think Mr. Kirby can
11 answer that question better than I.

12 THE COURT: But he's not under oath and you are. Do
13 you know if a proof of claim has been filed on behalf of your
14 client?

15 THE WITNESS: Your Honor, I apologize, I can't
16 answer that question with any certainty. I assume that
17 something akin to that's been filed, but I don't -- I have
18 steered clear of Bankruptcy Court through all these almost
19 40 years, Your Honor. I have twice stepped into Bankruptcy
20 Court and only then in connection with (indiscernible).

21 THE COURT: I got it. I wasn't trying to put you in
22 a box, I was just trying to figure out what you'd done.

23 THE WITNESS: I apologize.

24 THE COURT: All right.

25 THE WITNESS: I know that that's (glitch in the

1 audio).

2 THE COURT: Okay. Fair enough.

3 Ms. Quartarolo, any Cross?

4 MS. QUARTAROLO: Your Honor, I'm going to leave the
5 Cross to my colleague, Rob Ellison --

6 THE COURT: Ah, my apologies.

7 MS. QUARTAROLO: -- who I believe also --

8 THE COURT: I got it wrong again.

9 Mr. Ellison, any Cross?

10 MR. ELLISON: Yes, Your Honor. Thank you.

11 Can you hear me?

12 THE COURT: Loud and clear. Thank you.

13 CROSS-EXAMINATION

14 BY MR. ELLISON:

15 Q Mr. Riney, good afternoon.

16 A Hello, Mr. Ellison. I'm sure you've dreamed of this day.

17 Q For a long time. Mr. Riney, you just testified about
18 the -- what you expect the trial date would be if we were to
19 go back before Judge Sturgeon in August. Correct?

20 A I said I didn't think it would be set before the end of
21 this year or early next year. I don't know whether it would
22 be out some time after that, it could be quite a bit after
23 that I would guess. And that's just based upon not talking to
24 the judge but just my experience with how things work.

25 Q Okay. So just to be clear, it wasn't based on any recent

1 discussions with the judge or the judge's clerk?

2 A No, I would not do that, Rob.

3 Q Okay.

4 A (Glitch in the audio.)

5 Q So, Mr. Riney, before the San Diego litigation was stayed
6 Judge Sturgeon ordered a forensic inspection of your client's
7 laptop. Correct?

8 A I think that's correct, Rob. It's been a few months.

9 Q Okay. In the following --

10 A I wasn't really personally doing much work on that piece
11 of the whole discovery puzzle, so forgive me if my timing is
12 not good.

13 Q Understood, but you argued in opposition to Sorrento's
14 efforts to obtain a forensic inspection of Dr. Miao's laptop.
15 Right?

16 A I believe that was objected to, yes.

17 Q Okay. And following the Court's order granting that
18 motion the parties agreed to use an expert at Palo Alto
19 Networks to conduct the forensic work. Right?

20 A I think that's right, yeah.

21 Q Okay. And because the case was stayed first by agreement
22 of the parties and then the bankruptcy filing, the parties had
23 not yet agreed on the specific protocol to be applied by Palo
24 Alto Networks. Correct?

25 A I'll take your word on that, Rob. I know there a

1 protocol being worked on. I also know that computer was, you
2 know, reviewed long before I got involved in the case and
3 documents to do so. I think it really mostly confirms that it
4 was done.

5 Q Okay. But you agree with me that the work of Palo Alto
6 Networks remained outstanding at the time the case was stayed.

7 A Honestly, Rob, I don't recall whether they clicked that
8 button or not. I just don't know. I know it was underway, or
9 at least underway if not completed.

10 THE COURT: And, Mr. Riney, I appreciate the
11 informality but we are in a court hearing. It's Mr. Ellison,
12 it's Judge Jones, and you are Mr. Riney.

13 THE WITNESS: Okay. Thank you. I apologize, Your
14 Honor.

15 BY MR. ELLISON:

16 Q And do you recall, Mr. Riney, Judge Sturgeon referenced
17 16,000 files and meta data on the files contained on the
18 laptop that would be subject to Palo Alto Networks' forensic
19 imaging exercise. Do you remember that?

20 A I don't remember Judge Sturgeon using a number like that,
21 but I do remember someone from the office using that number.

22 Q Okay. Let's take a look --

23 MR. ELLISON: Judge Jones, if you wouldn't mind
24 Chandler Howell in my office handling the -- putting exhibits
25 up, presenting exhibits.

1 THE COURT: All right. He has control.

2 MR. ELLISON: Okay. Great. Mr. Howell could you
3 pull up Debtor's Exhibit 10 at the Docket 68 -- 658-10.

4 And scroll down for Mr. Riney's benefit, I'd just
5 like to ask him if this is a true and correct copy of the
6 judge's order granting Sorrento's motion to compel the
7 forensic image of Dr. Miao's laptop.

8 THE WITNESS: I'll take your word for that, it sure
9 looks like it from what little I can see it.

10 MR. ELLISON: Okay. So, Mr. Howell, if you could
11 scroll down to the bottom of page 1 and the top of page 2.
12 And I'll just read into the Record, it says, Plaintiffs have
13 shown good cause as required by Section 2031.310 of Division B
14 to allow for the forensic inspection of the laptop in
15 accordance with forensic inspection protocol attached as
16 Exhibit A to Plaintiff's proposed order. Therefore the motion
17 is granted. Plaintiff shall be allowed to have an expert take
18 a mirror image of all post-2018 searches made by Mr. Miao
19 which shall be limited to 16,000 files and meta data RAM on
20 the files.

21 So, Mr. Riney, did I read that correctly?

22 A It appears that you read it correctly, Counsel. I'm
23 squinting, but sure.

24 MR. ELLISON: And, Your Honor, I'd like to offer
25 this court order into evidence.

1 THE COURT: Any objection?

2 MR. KIRBY: No objection to the Court taking
3 judicial notice of the order.

4 THE COURT: So I think he's offering it for the
5 substance. I got it. I can take judicial notice of the fact
6 that it exists. But I think he's asking that I take -- that I
7 actually take the statement for the truth of the matter
8 asserted. So is there an objection to the admission of the
9 exhibit?

10 MR. KIRBY: Your Honor, I don't want to be
11 difficult, no objection.

12 THE COURT: So, one, I don't think it's being
13 difficult. I play by the rules of evidence. They should be
14 what govern our conduct. So there's either an objection or
15 not.

16 MR. KIRBY: I said there was not.

17 THE COURT: All right. Then it's admitted without
18 objection.

19 (Debtor's Exhibit No. 10 received in evidence.)

20 BY MR. ELLISON:

21 Q And, Mr. Riney, does this refresh your recollection that
22 Judge Sturgeon mentioned the 16,000 files and meta data read
23 on the files in his order granting Sorrento's motion to
24 compel?

25 A It does, Mr. Ellison, refresh my recollection that the --

1 those were the numbers that came out of, I think if I remember
2 correctly, the work that had been done by prior counsel and
3 their electronic discovery experts to produce those 16,000
4 files and the remaining meta data. It was effectively
5 confirming that Sorrento can have a second look at stuff
6 that's from some years ago to make sure I disclosed --

7 Q But --

8 A -- that it was -- excuse me.

9 Q Okay. Apologies. I thought you were done. I apologize
10 for interrupting.

11 You recall though having discussions with me and with
12 Palo Alto Networks about what the protocol would be for that
13 forensic inspection. Do you remember that?

14 A I remember we were in communication with the ESI expert
15 that was (indiscernible).

16 Q Okay. And there was a dispute --

17 A (Indiscernible).

18 Q Sorry, I thought you were done.

19 A I was.

20 Q There was --

21 A I apologize.

22 Q Okay. And there was some dispute over the scope of Judge
23 Sturgeon's order at the time the case was stayed. Correct?

24 A I'm sorry, Mr. Ellison, I don't recall that. I don't --
25 I just don't recall that one way or the other.

1 Q Okay. But following the stay, regardless of whether you
2 remember that there was a dispute or not, this is a topic that
3 will have to be taken up between the parties and if the
4 parties can't agree, we'll have to go back to Judge Sturgeon
5 following the lifting of the stay. Right?

6 A But, well, if I could, I would object to the question
7 being compound, but since I can't I will tell you that the --
8 I understand the engagement. You're entitled to have Palo
9 Alto look at those 16,000 files that were previously
10 introduced and give them to you again. I don't know what the
11 dispute is about that process, but we're just hoping to
12 (indiscernible).

13 Q Okay. But you don't remember having an agreement on
14 specifically what the protocol would be. Correct?

15 A One way or the other, I don't recall.

16 Q Okay.

17 MR. ELLISON: Mr. Howell, you can take that exhibit
18 down.

19 BY MR. ELLISON:

20 Q Mr. Riney, before the San Diego litigation was stayed
21 Judge Sturgeon also ordered Dr. Miao to provide further
22 responses to three different sets of written discovery
23 requests from Sorrento by November 29, 2022. Correct?

24 A That's correct.

25 Q And, in fact, after Judge Sturgeon issued that order you

1 on behalf of Dr. Miao applied ex parte to Judge Sturgeon to --
2 seeking to clarify the Court's order. Correct?

3 A Are you referring to the ex parte application about
4 whether or not -- related to the question of how the Chinese
5 data security rules impacted that order?

6 Q Correct. Yep.

7 A So, yes, that issue was brought up before the judge by ex
8 parte.

9 Q Okay. And the judge denied the ex parte application?

10 A He did.

11 Q And the judge did not modify the substance of its order
12 compelling Dr. Miao to respond to Sorrento's discovery.
13 Right?

14 A I think that's correct.

15 Q Okay. On December 6, 2022 after the Debtors agreed to a
16 short extension Dr. Miao served further responses to those
17 discovery requests in accordance with Judge Sturgeon's order.
18 Right?

19 A I'll take your word for that, sir.

20 Q Okay.

21 A I don't recall, but on this date, we would have done our
22 best to meet it.

23 Q So in a number of those RFP responses, the requests for
24 production of documents, Dr. Miao stated that he is amenable
25 to meet and confer discussions between counsel to determine if

1 relevant -- additional relevant information can be provided
2 without violating Chinese law. Do you remember that?

3 A I generally recall offering to discuss some things, sure.

4 Q And you don't recall producing any additional documents
5 in response to those discovery requests. Right?

6 A We stayed -- by agreement stayed all the discovery
7 pending mediation.

8 Q Okay. Following mediation the discovery -- if the stay
9 on the case were to be lifted, you would agree with me that
10 Dr. Miao would have to produce additional documents or the
11 parties would have to meet and confer over those responses.
12 Correct?

13 A I would anticipate that you and I would have a
14 conversation about whether anything more needed to be
15 produced.

16 Q Okay.

17 A (Glitch in the audio.)

18 Q (Glitch in the audio.)

19 A -- here is whether or not additional production is
20 required (indiscernible). But, yeah, Dr. Miao -- you and I
21 have a couple of open issues with Dr. Miao and that we needed
22 to do additional things.

23 Q Okay. And the last one is there was an outstanding
24 motion to compel correspondence from Dr. Miao and Dr. Chen's
25 expert, Dr. Woodnut (phonetic) that was pending subject to

1 parties' discuss to try to resolve it at the time the
2 bankruptcy case was stayed. Correct?

3 A Was there a motion pending or was that the meet and
4 confer discussion between you and counsel, or I think it was
5 co-counsel probably.

6 Q Well, Mr. Riney, I'll just offer to you there was a
7 third motion pending and we were still trying to resolve that
8 issue at the time the stay was imposed. Any reason to
9 disagree with that?

10 MS. KIRBY: Objection --

11 THE WITNESS: I recall that -- I recall that --

12 MS. KIRBY: -- Mr. Ellison is not -- Mr. Ellison is
13 not testifying here and he wasn't designated as a witness.

14 THE COURT: And so what's the objection?

15 MR. KIRBY: He's testifying as part of his question.

16 THE COURT: Mr. Ellison, so I'll make it easy for
17 you, he's raising a form objection, do you have any response?

18 MR. ELLISON: Yeah, I can just re-ask the question
19 to --

20 THE COURT: The objection --

21 MR. ELLISON: -- get the same information.

22 Mr. --

23 THE COURT: The objection --

24 MR. ELLISON: Oh, I'm sorry.

25 THE COURT: Hold on. The objection is sustained.

1 Now go ahead and re-ask your question.

2 MR. ELLISON: Okay.

3 BY MR. ELLISON:

4 Q Mr. Riney, do you have any reason to dispute the fact
5 that Sorrento had a motion pending regarding Dr. Woodnut at
6 the time the bankruptcy stay was imposed?

7 A Rob, I don't have any recollection about a motion that
8 could be pending. I mean if you were testifying and you said
9 that, I wouldn't, you know, refute it. But what I do recall
10 is that there was an issue as to whether the expert needed to
11 produce some additional documents. I don't think it
12 (indiscernible).

13 Q Okay. And when the stay would be -- when the stay is
14 lifted that issue will be -- need to be addressed by the
15 parties. Correct?

16 A No doubt.

17 Q Okay. So on page 4 of movant's reply, which is at Docket
18 Number 614, there's a statement that says, There is no pending
19 discovery. That statement's not accurate. Correct?

20 A Do you have the document? I think -- my recollection of
21 the proceeding was is there's no pending discovery due from
22 the Debtor.

23 Q So it wouldn't be accurate if it just said, there's no
24 pending discovery period. Is that correct?

25 A I'd ask you to contact counsel, that you contact -- I

1 think what Mr. Kirby has argued in his papers is that there is
2 no outstanding discovery due from the Debtor. So that's the
3 context as I understood it from what Mr. Kirby filed.

4 Q Mr. Riney, when all these discovery issues are ironed out
5 the parties will have to prepare for trial. Correct?

6 A I mean if we ever get a trial date, yes.

7 Q Okay. And the litigation has been pending for about five
8 years. Is that right?

9 A Approximately.

10 Q There's roughly 35 claims between the parties?

11 A In that ballpark. You mean -- by that you mean counts?
12 Yes.

13 Q Yep. Okay. And there's a voluminous record in the
14 litigation. Correct?

15 A There's a voluminous record in the litigation, yes.

16 Q And you'd agree that the trial will be north of three
17 weeks, likely around four weeks when it eventually happens?

18 A That was, yes, I mean I think we were giving four before
19 the court severed out the claims against the lawyer. But I do
20 think probably it's in that ballpark.

21 Q Thank you, Mr. Riney.

22 MR. ELLISON: I have no further questions.

23 THE COURT: All right. Thank you.

24 Mr. Kirby, any redirect?

25 MR. KIRBY: No, Your Honor.

1 THE COURT: All right. Thank you. Mr. Riney's your
2 excused as a witness.

3 (Witness excused.)

4 THE COURT: Mr. Kirby, who's your next witness?

5 MR. KIRBY: Your Honor, before calling Dr. Chen I'd
6 like to offer Exhibit 2 on our list which is the cross-
7 complaint of Dr. Chen and Dr. Miao filed in the Superior Court
8 lawsuit.

9 And I ask that the Court take judicial notice of
10 that just for the purpose of seeing what claims are being made
11 in the lawsuit and not for the truth of any sort of a finding
12 as to the merits of those claims.

13 THE COURT: So, Mr. Ellison, I'm going to modify
14 that a little bit. Do you have any objection to my admitting
15 Exhibit 2, Movant's Exhibit 2 for the limited purpose of
16 showing what claims have been asserted in the litigation?

17 MR. ELLISON: No, Your Honor.

18 THE COURT: All right. Then I'll admit it for that
19 limited purpose.

20 (Movant's Exhibit No. 2 received in evidence.)

21 MR. KIRBY: All right. Dr. Chen --

22 THE COURT: So, Mr. Kirby, are you intending on
23 calling Dr. Chen?

24 MR. KIRBY: Oh, my apologies, Your Honor. I do want
25 to address the Court, or ask a question about this. This is a

1 complicated lawsuit with a lot of complicated claims. It will
2 take a very long time to examine even on direct Dr. Chen about
3 the merits of those claims. And perhaps the Court can give me
4 some guidance as to whether it intends to evaluate the merits
5 of the claims or make decisions on that before I offer his
6 testimony.

7 THE COURT: I do not intend on evaluating the merits
8 of any claim asserted in the California litigation.

9 MR. KIRBY: All right. Thank you, Your Honor.
10 Well, I would like to call Dr. Chen.

11 THE COURT: All right. Dr. Chen, if you would,
12 please, sir, if you'd raise your right hand.

13 (Witness sworn.)

14 THE COURT: All right. Thank you, sir.

15 Mr. Kirby, go ahead, please, sir.

16 DIRECT EXAMINATION

17 BY MR. KIRBY:

18 Q Dr. Chen, prior to the merger transactions which are the
19 subject of the Sorrento litigation in the Superior Court, you
20 were the -- were you the principal, or one of the principals
21 of a company called Concourtis?

22 A Yes.

23 Q And when Concourtis ultimately merged with and became a
24 wholly owned subsidiary of the Debtor, in connection with that
25 transaction did you transfer certain intellectual property

1 Concourtis?

2 A So actually there was two transactions, 2013 and 2016.
3 So on the 2013 we transferred certain IP and technology, but
4 we retained the target and also the rights to use those
5 (indiscernible) targets on the technology part, and plus
6 there's a (indiscernible) retained (indiscernible). Then in
7 2016 we transferred all the IP, all the ownership to
8 Sorrento -- to Concourtis.

9 Q Dr. Chen, let's focus on the 2016 merger. First of all
10 the intellectual property that was transferred, were you
11 developing that intellectual property and deriving income from
12 it at the time that it was transferred to Concourtis?

13 A Yes, me and my partner, Dr. David Miao, we are the co-
14 inventors of some of the technology and Dr. Miao is the major
15 inventor of this technology.

16 Q And were you developing that technology and did it have
17 at least the potential of making a great deal of money?

18 MR. ELLISON: Objection, it lacks foundation, it's
19 compound.

20 THE COURT: I'll sustain the form objection, it was
21 a compound question. I'd have no idea what answer he was
22 giving. So, Mr. Kirby, you can break it down.

23 BY MR. KIRBY:

24 Q Were you in the process of continuing to develop that
25 intellectual property at the time of the 2016 merger?

1 A Yes. Yes.

2 Q And did that development cost money?

3 A Yes.

4 Q And did that intellectual property that you were
5 developing at your expense have the potential to generate
6 large amounts of income down the line?

7 A Yes. It's actually one of the collaborations with a
8 Chinese company called the Column (phonetic) they continued.
9 They're actually going to file on the -- actually they filed
10 for marketing this year, and merged. Actually through the
11 partnership with them acquired all the rights, the global
12 rights of the up-front payments of 175 million and milestones
13 totals of 9.5 billion. So that's one of our projects. We
14 started them in 2013 through the collaboration of them, and
15 then, you know, 2016 we transferred the rights to Sorrento in
16 the one -- the merger.

17 So then also there's another one, at the same time
18 we have a roll-up partnership. We have a similar 1380(c)
19 project and because of Sorrento, well, actually the full
20 partnership swap. So that project actually right now is just
21 on hold even without stoppage. They probably got a similar
22 kind of -- generally a similar partnership like the one
23 (indiscernible).

24 Q All right. Now in the process of negotiating the 2016
25 merger did the parties put any value on the amount of stock

1 that you were supposed to receive in Concorthis?

2 A We actually have more than value on the -- that's good
3 faith because that's the promise so we can actually merger
4 with IPL and become a second company.

5 So we kind of (indiscernible) little bit of a value.
6 So total finally agreed value is 40 million. That includes
7 the bitcoin units and the partnership and also the '16
8 included the targets of the IP (indiscernible).

9 Q So just to be -- make that clear, \$40 million was the
10 valuation?

11 A That's right.

12 Q Now at the time of the 2016 merger did you believe that
13 you were represented in that merger by Paul Hastings?

14 A Yes.

15 Q And that merger hadn't turned out very well so far, has
16 it, sir?

17 A Unfortunately, yes.

18 Q And as the Court will see in the cross-complaint, you
19 sued Paul Hastings for malpractice, have you not?

20 A That's right.

21 Q And are you presently prevented from pursuing that
22 lawsuit because of the automatic stay?

23 MR. ELLISON: Objection, leading.

24 THE COURT: Yeah, sustained. I also don't
25 understand how that is given what was represented in the

1 pleadings, but keep going.

2 BY MR. KIRBY:

3 Q All right. Dr. Chen, is it your understanding that you
4 are unable to pursue your lawsuit against Paul Hastings due to
5 a ruling by Judge Sturgeon that the Concourtis litigation has
6 to go first?

7 A That's what I heard, yes, from my lawyers.

8 Q Dr. Chen, have you -- do you know the amount of damages
9 that you're claiming in the Sorrento Therapeutics case in the
10 Superior Court?

11 A What are -- Mr. Kirby, can you repeat the question?

12 Q What is the amount of damages that you're claiming
13 against Paul Hastings?

14 THE COURT: Well, that wasn't the question that
15 you --

16 MR. KIRBY: Oh.

17 THE COURT: -- that wasn't the question that you
18 asked the first time. He asked you to repeat the question
19 that you asked, let's not change the question.

20 MR. KIRBY: I'm not sure I'm going to be able to
21 read it back verbatim.

22 BY MR. KIRBY:

23 Q Are you familiar with the amount of damages that you are
24 claiming in the Sorrento litigation in Superior Court?

25 A Sort of, not all the final --

1 Q Is it in excess of \$40 million?

2 A I think that the value is more than \$40 million, probably
3 much more.

4 Q All right.

5 MR. KIRBY: I have nothing further for Dr. Chen.

6 THE COURT: All right. Thank you.

7 Dr. Chen, have you signed a proof of claim in the
8 Sorrento bankruptcy case?

9 THE WITNESS: Yes.

10 THE COURT: Okay. All right. Mr. Ellison, you have
11 Cross for Dr. Chen?

12 MR. ELLISON: Yes, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. ELLISON:

15 Q Dr. Chen, sitting here today you have no idea how much,
16 if any, profits would be generated from the IP that was
17 transferred to Sorrento as part of the 2016 merger. Is that
18 correct?

19 A I have a general idea based on the news release, I have
20 some idea, but not exact numbers. But definitely more than 40
21 million.

22 Q More than 40 million based on the news?

23 A Yes, based on the news and based on the value, certainly
24 the value of the business part and all the current -- the
25 entities that's included in the merger.

1 Q Did you just say based on the court value of Concourtis?

2 A Yes.

3 Q Okay. There hasn't been a valuation done of Concourtis
4 recently as far as you're aware. Correct?

5 A That's my estimation.

6 Q Okay. So the valuation that you're talking about is a
7 valuation that you estimated?

8 A Yes.

9 Q Before the 2016 merger with Sorrento, Concourtis never
10 generated a profit. Correct?

11 A Sorry, can you repeat it back?

12 Q Yeah, before the 2016 merger Concourtis never generated a
13 profit. Correct?

14 A That's not true.

15 Q Okay. Why don't you tell the Court the profit that
16 Concourtis, Inc. generated after it was formed in 2013.

17 A No, no, so Concourtis, Inc. includes the bits and the
18 unit, the service unit, that one always generated a revenue,
19 and always (indiscernible). Even our understanding of rights
20 based on the financial report provided by Sorrento, the
21 margins that, the profit margins (indiscernible) at 50
22 percent. And you -- the net margin profit model
23 (indiscernible) 30 percent. So that definitely in itself
24 generated revenue and also made a profit.

25 Q Before the 2016 merger with Sorrento when you were in

1 charge of Concorthis, it was a holding company. Correct?

2 A Yes.

3 Q Okay. And did any -- did any of the -- strike that.
4 Other than CBC -- strike that.

5 In 2013 Sorrento acquired CBC. Correct?

6 A Sorrento acquired a part of asset of CBC. So only the IT
7 part, the technology part, but not others. So there's three
8 units, service units, partnership and also the IT part.

9 Sorrento only acquired the IT part, only the two technologies.

10 Q And it's your testimony here today that the service part
11 of CBC was never part -- was not part of the 2013 merger?

12 A No. So it's a delayed merger, it's a delayed. So never
13 stayed a part of this units.

14 Q Dr. Chen, under the 2016 merger the parties agreed that
15 there were two forms of consideration. Right?

16 A What do you mean two forms, I don't understand what the
17 two forms are.

18 Q Okay. So the closing consideration in the 2016 merger
19 was a \$100 payment at closing and a percentage of CBC stock
20 upon a qualified financing of \$10 million more. Is that
21 right?

22 A I don't understand. At that time I don't understand what
23 this \$100 means. Okay. All we understand is that 40 million
24 and that's a bill and they're going to issue the stock --
25 value of stock to us up to \$40 million.

1 Q But, Dr. Chen, my question was, not -- my question was
2 set this \$100 aside, the other form of consideration under the
3 2016 merger was that the CI shareholders would obtain certain
4 stock in CBC upon a qualified financing. Is that right?

5 A That's right.

6 Q And under these -- under the -- under all of the deal
7 documents for the 2016 merger there is never a time when
8 Sorrento was going to make a cash payment to the CI
9 shareholders in the amount of \$40 million. Correct?

10 A No. But the problem is Henry promised when we send out
11 the -- send off the Concorthis from (indiscernible) and it goes
12 to IPL. So we don't send off the company, they cannot go
13 because of (indiscernible).

14 Q Okay. Sir, just listen to my question. My question was
15 simply whether under the 2016 merger the CI shareholders were
16 entitled to a \$40 million cash payment. And I think you said
17 no, but I'm wondering whether you meant that is correct.

18 A (No audible response.)

19 Q So under --

20 MR. KIRBY: I'm sorry, Mr. Ellison, can you repeat
21 the question? I'm just confused as to the question.

22 MR. ELLISON: Yes.

23 BY MR. ELLISON:

24 Q Under the 2016 merger the CI shareholders were never
25 entitled to a \$40 million cash payment. Correct?

1 A That's correct.

2 (Pause in the proceedings.)

3 MR. ELLISON: Mr. Howell, would you mind bringing up
4 the 2016 merger agreement, which is Debtor's Exhibit 12 at
5 Docket 658-12?

6 BY MR. ELLISON:

7 Q And, Dr. Chen, I'm just going to ask you -- first let me
8 ask you, are you familiar with the 2016 merger agreement
9 between Sorrento and you and Dr. Chen and others?

10 A Dr. Miao you mean.

11 Q I'm sorry, Dr. Miao and others?

12 A Yes.

13 Q Take a look at Section 3.1-1 of the 2016 merger on
14 page 32.

15 A (Perusing document.)

16 Q And before I -- we look at that provision, Dr. Chen, the
17 \$40 million in value that you were talking about earlier
18 relates to the CI shareholders' entitlement to certain stock
19 in CBC upon a qualified financing. Is that right?

20 A Yes.

21 Q Okay. So isn't it right, Dr. Chen, that you and Dr. Miao
22 agreed that the qualified financing may take an indefinite
23 period of time to happen following the closure of the 2016
24 merger?

25 MR. RINEY: Your Honor, excuse me, I apologize, but

1 this question is a -- it's calling for a legal conclusion, and
2 is an issue in the State Court litigation and (indiscernible).

3 THE COURT: I would agree with you except for one
4 factor. You are a witness in this proceeding, you can't also
5 be the lawyer. But you could --

6 MR. RINEY: Your Honor, I --

7 THE COURT: -- you coached your lawyer on what
8 objection to make.

9 MR. RINEY: I was nudging Mr. Kirby as gently and
10 professionally as I could, Your Honor, but I do think it's --

11 THE COURT: I got it. So you've had your time on
12 the stand. Your job now is to fight the urge and sit very
13 quietly.

14 MR. KIRBY: Your Honor, Dean Kirby, I do wish to
15 interpose that objection, it calls for a legal conclusion.

16 THE COURT: Any response?

17 MR. ELLISON: Yeah, Your Honor, I'll re-frame the
18 question.

19 THE COURT: All right. Then the objection is --
20 BY MR. ELLISON:

21 Q Dr. Chen --

22 THE COURT: I'll find that the objection is moot
23 based upon the question being withdrawn.

24 BY MR. ELLISON:

25 Q Dr. Chen, in Section 3.1-1 do you see where it says such

1 key stockholder, and then it goes on, and in the middle of
2 that section it says, Acknowledges that such key stockholder
3 can bear the economic risk of its investment for an indefinite
4 period of time. Do you see that?

5 A Which line? Oh, indefinite period of time, yes.

6 Q And is it your understanding, Dr. Chen, that that
7 provision relates to when to when the qualified financing may
8 occur?

9 A So, Mr. Ellison, so I think I said it before, I'm not a
10 lawyer so at that time I really relied on the lawyers to read,
11 go through the file (indiscernible) information to help me to
12 understand that, and then my uncle to my understanding he
13 promised, you know, making the deal (indiscernible) after
14 merger and until now I never heard of the -- otherwise I would
15 not agree to do the merger.

16 So even though there's no writing, but that's just based
17 on the good faith that we believed at that time
18 (indiscernible) that time. And also this document is written
19 by lawyer, my lawyer supposedly, so I -- that's my
20 understanding is just they do that immediately.

21 Q Okay.

22 MR. ELLISON: And, Mr. Howell, we can take this
23 down.

24 BY MR. ELLISON:

25 Q When you say do it immediately, are you talking about the

1 qualified financing, raising financing?

2 A Yes. After (indiscernible) --

3 Q Okay.

4 A -- after merger.

5 Q Okay. So, Dr. Chen, between December 2016 and the time
6 you left Sorrento in September 2017 one of your job was to
7 obtain a qualified financing, wasn't it?

8 A No, that's not my job. My job is to manage Concourtis,
9 the day-to-day management. So other (glitch in the audio) and
10 also I'm not the -- I have no rights to go outside to do the
11 financing.

12 Q Okay. So it's your testimony here today that it was not
13 one of your job responsibilities to attempt to obtain a
14 qualified financing between December 2016 and September 2017?

15 A Yes.

16 Q And in September 2018 you and Dr. Miao filed
17 counterclaims against Sorrento. Correct?

18 A Yes.

19 Q And one of the things that you and Dr. Miao asked the
20 Court to do was rescind the 2016 merger. Right?

21 A That's right.

22 Q Okay. And those counterclaims are still pending?

23 A I think that's because of this case. Right?

24 Q Yes?

25 A Yes.

1 Q Dr. Chen, the -- I want to go back to something we
2 covered earlier and then I'll be done here, the services
3 business that you testified about earlier was part of CBC.
4 Correct?

5 A Was a part of CBC after 2016.

6 Q But from the -- isn't it true, Dr. Chen, that CI merely
7 retained an option to take back the services business from CBC
8 following the 2013 merger?

9 A So that's the issue of our lawyers. The way they wrote
10 it is like we have acquired that. But if you read the
11 document, we had it before, it never acquired, it's ours, our
12 business, our asset, just delayed payment of.

13 Q So it's your testimony that the documents actually say
14 that the services business was part of the 2013 merger, but
15 that was not your intent. Is that your testimony?

16 A That's my lawyer to draft that one. So he explained to
17 me that's the legal language, but if we -- if you look at our
18 other documents, it says that it's (indiscernible), it's
19 delayed for three years, but he wrote the way (indiscernible).
20 We acquired -- haven't acquired the rights.

21 Q Okay. You never exercised an option to buy back the
22 services business. Correct?

23 A We plan to, had offered to acquire the rest of us, that's
24 the one in 2016. So to supposed end of 2016 we have a right
25 to acquire back. Then Henry in 2015 in May he offered to

1 acquire the rest of the rights back.

2 MR. ELLISON: I have nothing further.

3 THE COURT: All right. Thank you.

4 Mr. Kirby, any Redirect?

5 MR. KIRBY: Yes.

6 REDIRECT EXAMINATION

7 BY MR. KIRBY:

8 Q Dr. Chen, did you believe that substantial money was
9 going to be invested in Concoctis in order to position it to
10 make an IPO?

11 A To Concoctis itself? Yes, yes. So, you know, in 2016
12 when David and I started Concoctis not many people doing ADC
13 so we actually the pioneer (glitch in the audio). So you can
14 look at the -- right now you can look at the news for the
15 pharmaceutical position. Right now every deal is related to
16 ADC. So Pfizer just acquired (indiscernible). So we have a
17 separate project in the market almost in market
18 (indiscernible) clinical and I'm very confident that we're
19 going to get IPO even before this year.

20 Q Dr. Chen -- Dr. Chen, let's focus on the specific
21 question that's being asked, just in --

22 MR. ELLISON: Yeah, I apologize --

23 MR. KIRBY: -- the interest of time.

24 MR. ELLISON: -- Mr. Kirby, just for interrupting.
25 I'm just going to move to strike, that that entire answer

1 lacks foundation and it's very speculative.

2 THE COURT: Wrong objection, so I'm going to deny
3 the motion to strike. Let's move on and actually try to get
4 something relevant.

5 Could I ask you folks to do that?

6 BY MR. KIRBY:

7 Q Dr. Chen, did Dr. Gee (phonetic) represent to you that
8 Concourtis is in a position to invest money necessary to
9 develop that technology?

10 A Yes, he went -- in 2016 when he approached David prior to
11 the business, and they agreed to Sorrento to invest 65 million
12 to further -- to that Concourtis entity to further -- to
13 enhance the chance of IPO.

14 Q Did that happen after the merger?

15 A No.

16 MR. KIRBY: Your Honor, I have nothing further for
17 Dr. Chen.

18 THE WITNESS: Oh, there's one --

19 THE COURT: Dr. Chen --

20 THE WITNESS: -- more thing.

21 THE COURT: -- Dr. Chen, there's no question.

22 Indulged everyone long enough. You're excused as a witness.

23 (Witness excused.)

24 THE COURT: Mr. Kirby, any additional witnesses?

25 MR. KIRBY: No, Your Honor.

1 THE COURT: Mr. Ellison, do you intend on calling
2 any witnesses?

3 MS. QUARTAROLO: Your Honor, it's Amy Quartarolo.

4 THE COURT: I got it wrong again.

5 MS. QUARTAROLO: Sorry to jump back.

6 THE COURT: Yes, ma'am.

7 MS. QUARTAROLO: If you guess, we'll go with someone
8 else. The Debtors would like to call Mr. Mo Meghji.

9 THE COURT: All right. Mr. Meghji, if you would,
10 please, sir, if you'd raise your right hand?

11 (Witness sworn.)

12 THE COURT: All right. Thank you, sir.

13 Ms. Quartarolo, go ahead, please, ma'am.

14 MS. QUARTAROLO: Thank you.

15 DIRECT EXAMINATION

16 BY MS. QUARTAROLO:

17 Q Mr. Meghji, I know we've covered some of the background
18 in prior hearings, but just briefly for the Record where are
19 you currently employed?

20 A M3 Partners.

21 Q And what is your title?

22 A I'm managing partner of the firm.

23 Q And how long have you worked with M3?

24 A About 7 years.

25 Q And what is your role with respect to the Debtors in this

1 case?

2 A I'm the Chief Restructuring Officer of the Debtor.

3 Q And in connection with that role what is the scope of
4 your authority?

5 A Oversight of the entire restructuring process.

6 Q Mr. Meghji, why did the Debtors file for Chapter 11
7 protection?

8 A The Debtors had received an arbitration award and
9 judgment against them and were not in a position financially
10 to satisfy the award and the judgment, so they filed for
11 Chapter 11 to restructure and to maximize the value to the
12 Debtors' stakeholders.

13 Q And in connection with the Chapter 11 filing did the
14 Debtors consider what pre-petition litigation matters it would
15 made sense to actively litigate versus those which they
16 believe should remain stayed?

17 A Yes.

18 Q And are you generally familiar with the motion that's
19 been filed by Messrs. Chen and Miao and that's before the
20 Court today?

21 A I am, I'm generally familiar at a high level.

22 Q And are you generally familiar with the underlying
23 litigation that's pending in San Diego Superior Court?

24 A Again, at a high level, yes.

25 Q Have the Debtors estimated how much in legal fees would

1 be required to adjudicate the case through trial?

2 MR. KIRBY: Objection --

3 THE WITNESS: Yes, my under --

4 MR. KIRBY: -- calls for his recollection of a
5 hearsay statement.

6 MR. KIRBY: Overruled. Go ahead, Mr. Meghji.

7 THE WITNESS: My understanding is that it would be
8 over \$5 million to see this litigation to conclusion.

9 BY MS. QUARTAROLO:

10 Q Mr. Meghji, are you familiar with the Debtors' DIP
11 budget?

12 A Very familiar.

13 Q Do the Debtors have room for an expense in that range in
14 their DIP budget?

15 A No.

16 Q We heard from Mr. Kirby earlier that the DIP budget has
17 amounts for professional fees or legal fees. Why couldn't
18 legal fees for the Chen/Miao litigation matter fall within
19 those line items?

20 A All of those legal and restructuring fees have been
21 spoken for in terms of the cost of the restructuring and
22 issues related to the restructuring. So there really just is
23 not any available budget. In fact, the DIP budget is so tight
24 that even managing the restructuring budget is a challenge at
25 this point.

1 Q Mr. Meghji, as the Debtors' CRO how do you believe that
2 modifying the automatic stay such that the Chen/Miao
3 litigation would proceed through trial could impact the
4 Debtors and their reorganization efforts?

5 A Very negatively. We're running a sales process right
6 now. We've also -- the Debtors have significantly reduced its
7 work force as part of its restructuring efforts. So all of
8 the management by this time is focused on the restructuring
9 process, the sale process and the financing process which is
10 critical to a Chapter 11 plan for the Debtors.

11 MS. QUARTAROLO: Thank you, Your Honor. Nothing
12 further at this time.

13 THE COURT: All right. Thank you.

14 Mr. Kirby, any cross for Mr. Meghji?

15 MR. KIRBY: Yes.

16 CROSS-EXAMINATION

17 BY MR. KIRBY:

18 Q Mr. Meghji, the DIP budget, litigation budget that you're
19 referring to is -- does that extend beyond the end of June of
20 this year?

21 A So the DIP is currently -- the DIP budget is done through
22 June, with a provision to extend it to July 31 under a couple
23 of conditions. One, we would need the consent of our DIP
24 lender and the second thing would be if we could raise another
25 \$20 million to do that, which would require a plan having been

1 filed -- a plan of reorganization having been filed that was
2 acceptable to our DIP lenders by June 15.

3 Q Now in your planning did you determine what amount of
4 attorneys fees would be necessary to participate in this
5 litigation to the end of June?

6 A To participate in the litigation with your clients?

7 Q Yes, sir.

8 A No, we did not, there was an automatic stay in place so
9 we did not expect to spend money on litigation with your
10 clients.

11 Q And so did you take into account then -- well, excuse me,
12 I'll withdraw that. The \$5 million estimate that you referred
13 to, you said that was what might be necessary as far as you
14 knew to bring the case to a conclusion?

15 A Correct.

16 Q And to our understanding that would be a trial?

17 A It would be everything from here going forward that it's
18 a minimum of \$5 million.

19 Q All right. So do you have any idea, sir, what it would
20 take -- what it would cost for this litigation to get back on
21 track and get scheduled for trial some time next year, between
22 now and the end of the year let's say.

23 A No.

24 Q Did you -- when you say that it would be a terrible
25 distraction, a distraction to whom, sir? And again, I'm

1 speaking of just from now to the end of the year, let's not
2 talk about a trial.

3 A There is a huge amount of work to get this company out of
4 bankruptcy, to get the exit financing, to get the sales
5 process with a limited management team that is overwhelmed in
6 terms of the amount of work that's required, both in terms of
7 managing its clinical programs, as well as the work that's
8 required to get the company out of bankruptcy. It's a
9 monumental task, even with the help from my team and
10 restructuring counsel distracting -- we also have a very tight
11 time line under our DIP to get the company -- get a plan of
12 reorganization filed and hopefully get the company out of
13 bankruptcy, because that's my -- that's what I'm referring to.

14 Q And how is management going to be distracted by this case
15 being set for trial some time next year?

16 A I'm sorry, I don't know what this trial means for next
17 year, I'm just talking about management has an absolutely full
18 plate right now. Any other distractions relating to anything
19 else in the next two or three months are problematic.

20 MR. KIRBY: Your Honor, I have nothing further for
21 Mr. Meghji.

22 THE COURT: All right. Thank you.

23 Any Redirect?

24 MS. QUARTAROLO: No, Your Honor.

25 THE COURT: All right. Thank you, Mr. Meghji. You

1 are excused as a witness.

2 (Witness excused.)

3 THE COURT: Any additional witnesses from the
4 Debtor?

5 MS. QUARTAROLO: No, Your Honor.

6 THE COURT: All right. Thank you.

7 Everybody agree that the evidence is now closed?

8 MR. KIRBY: Yes, Your Honor.

9 THE COURT: All right. Thank you.

10 MS. QUARTAROLO: Yes, Your Honor.

11 THE COURT: Mr. Kirby, any closing argument?

12 MR. KIRBY: Yes, Your Honor, very -- first let me
13 say, I don't think I'm digressing here really, I'm a
14 professional and I was very disturbed when Your Honor stated
15 his perception that I had misrepresented the Record, and I'm
16 not proud of this fact, but I was reading when I was making
17 that argument, and I was so disturbed by that statement that I
18 went back and looked at the word -- to see if I could find the
19 word Evidence and what I said. And I found it, and it says
20 there is evidence only on one side but the burden of
21 continuing this litigation over the next few months is slight.

22 Now what I meant, Your Honor, was that I believe in
23 their papers that they had the duty to demonstrate that they
24 could establish a reasonable likelihood of prevailing. And if
25 they couldn't, then there wasn't any reason to have an

1 evidentiary hearing and that's the law, and perhaps a little
2 different than how things are proceeding in this court. And I
3 do appreciate that and understand it. But I want to make
4 clear that I don't believe I did, and certainly did not intend
5 to misrepresent anything to the Court.

6 To get to the motion, I don't think -- the Debtor
7 has the burden of proof on all these issues. I don't think
8 that all of the cross-examination about the merits of this
9 case amount to anything. The Court sees and has taken
10 judicial notice of one of the pleadings, this is a very
11 complicated case, it's gone on for five years, it has been
12 disposed out on summary judgment. A great deal of time and
13 energy has been spent making those claims clearly. They're
14 legitimate claims. And I don't think that the Court could
15 find otherwise.

16 And the Court didn't ask me but, no, there hasn't
17 been a proof of claim filed. And there -- unless it happened
18 in the last couple of days a claims bar date hasn't bee set.
19 So, no, there's no proof of claim. But there is ample
20 evidence before the Court that this is a real dispute
21 involving real money.

22 But the main thing -- point that I want to make is
23 that there has been no showing by the Debtor to carry its
24 burden of proof that there is almost any burden on this Debtor
25 for this case to go back to its August 7 statu conference for

1 a trial date to be set, most probably months later, and
2 therefore no reason to continue the stay in effect. So --

3 THE COURT: So, Mr. Kirby, is it your belief that
4 once a trial date gets set that there's absolutely nothing for
5 the Debtor to do?

6 MR. KIRBY: Now --

7 THE COURT: That wasn't the testimony.

8 MR. KIRBY: No, I didn't say absolutely nothing for
9 the Debtor to do. The Debtor's lawyers apparently may follow
10 through on some -- a discovery order, I believe there may be
11 only one that was referred to. But that doesn't distract
12 management of the Debtor and it can't cost anything touching
13 the amounts of money that are going to professional fees.

14 I would go so far as to say that, what are there,
15 four or five Latham & Watkins lawyers attending this hearing.
16 The amount of time that is going to be spent on something like
17 that just simply is de minimis compared to the amounts of
18 money that are going forth in attorneys fees in this case.
19 And certainly within the next few months.

20 We hear on the one hand how this has to be done,
21 this has to be done at the end of the summer. We must have
22 our plan of reorganization, we must do this. All right. But
23 that being the case, why is it a problem for Dr. Chen and Dr.
24 Miao to get back in line to have their lawsuit eventually
25 heard? The burden to them, they gave up substantial assets in

1 order to be in this transaction that they're challenging.
2 They have a colorable claim against their lawyers. So they're
3 prevented from doing this.

4 And to address something that the Court mentioned
5 they're prevented from doing it because the judge found that
6 those two claims -- Judge Sturgeon I'm talking about -- were
7 intertwined and that in his judgment the case against Sorrento
8 had to go first. So my clients are prevented from pursuing
9 their just claims against Paul Hastings because of that.

10 So there's hardship on their side. And I think that
11 the evidence has not established that there's much of any
12 hardship on the other side. So if we're weighing harm, I
13 think that that clearly goes to my client. Thank you.

14 THE COURT: All right. Thank you.

15 Who is making closing argument on behalf of the
16 Debtor?

17 MS. QUARTAROLO: You didn't want to guess this time,
18 Your Honor?

19 THE COURT: I was -- I didn't want to go 0 for 3.

20 MS. QUARTAROLO: It will be me. Amy Quartarolo on
21 behalf of the Debtors. Thank you for hearing us today, Your
22 Honor.

23 We would submit that the movants here have not met
24 what is their initial burden of establishing cause for
25 modifying the stay, which is made clear in both the *Sonics*

1 case and in the Southern District of Texas in the *In Re*
2 *Gramercy Court* case both of which are cited in our objection.

3 The balance of the equities we believe weighs
4 sharply in favor of denying the relief sought. The *Sonics*
5 factors as they're referred to do not support a finding of
6 cause to modify the automatic stay. I'm not going to
7 reiterate the summary of the litigation which has been briefed
8 and put on before Your Honor today, but I think it is
9 important to note that resuming the litigation would take
10 substantial resources from the Debtors and the Debtors don't
11 have those resources to devote, either monetary or labor
12 hours.

13 As you heard in the cross of Mr. Riney, he
14 acknowledged that there's several items that remain open in
15 the litigation and those items will need to be addressed if
16 and when the stay is lifted. So we don't believe that the
17 stay should be lifted, and we believe that that would be
18 burdensome on the Debtors. And even after the pretrial work
19 that remains, this litigation is estimated to be a trial of
20 upwards of four weeks and that certainly will require great
21 time and attention from the Debtors and their professionals.

22 Movants here -- I didn't hear any evidence of
23 demonstrable harm that they will suffer if the relief is not
24 granted at this time. There's simply no need to liquidate
25 this particular claim at this time. And as Mr. Meghji

1 testified, there will be harm to the Debtors if the stay is to
2 be lifted now. The Debtors must remain focused on the
3 restructuring efforts and there's simply no room in the
4 Debtors' limited DIP budget to fund this additional
5 litigation.

6 I just want to briefly respond to four additional
7 arguments that have been raised by movants then to be offered
8 into Court of the relief that they seek. First, they argue
9 that because resuming the litigation would eventually lead to
10 a resolution of the issues as between the movants and the
11 Debtors, that that counsel's in favor of modifying the stay.
12 I believe that misses the point. The relevant inquiry is
13 whether proceeding with the litigation might help solve
14 significant open issues in the bankruptcy case. And I heard
15 no evidence or argument that that is the case here.

16 Second, while it's true that the Debtors are
17 marketing their assets through a sale process, there's no
18 indication at present that the particular assets in dispute
19 are being sold, and to the extent they ever were proposed to
20 be sold, certainly there will be notice and an opportunity to
21 be heard and movants can raise any issue at that.

22 Third, movants argue that modifying the stay will
23 not burden the Debtors or their impact on -- have any impact
24 on their restructuring efforts. I don't think that there's
25 any evidence in support of that and I think we've presented

1 ample evidence in the Record today to suggest to the contrary.

2 Fourth and finally, the movants point to the line
3 item in the DIP for the professional fees, and we heard from
4 Mr. Kirby that he thinks that there should be room to
5 accommodate that. Respectfully it is not Mr. Kirby's business
6 judgment that the Court should consider in terms of the
7 allocation of the DIP budget and those dollars have already
8 been allocated as Mr. Meghji testified.

9 In conclusion the balance of the harm I think weighs
10 sharply in favor of denying the relief sought and we would ask
11 that the Court deny the motion that's before you.

12 THE COURT: All right.

13 MS. QUARTAROLO: Thank you, Your Honor.

14 THE COURT: I've got before me a motion for relief
15 filed by the movants, it's at Docket Number 490. I do find
16 that I have jurisdiction over the matter pursuant to 28 USC
17 Section 1334. I do find the matter constitutes a core
18 proceedings under Section 157. I further find, to the extent
19 it is an issue, that I have the requisite constitutional
20 authority to enter an order with respect to the motion.

21 I really didn't understand the approach. It started
22 from what was initially filed to the declarations, and I sat
23 with Mr. Riney's declaration and listened to him testify, and
24 you just reinforced why I don't take declarations. It's just
25 a little disappointing. As I listened to the testimony that

1 was offered by the movants, the testimony had little, if
2 anything, to do with whether or not there should be relief
3 granted from the automatic stay. I will find that there's
4 been no cause established.

5 To the contrary Mr. Meghji is presented with a
6 difficult problem that he is required to address. It has
7 taken all of their resources, and I'm not convinced he's going
8 to be successful, I hope that he is, but I understand -- I
9 understand exactly the situation that he is facing. And as I
10 look at the case, if it is to have any chance of success, it
11 is going to require 100 percent of his team's efforts and
12 those remaining at the company during the pendency of the
13 case.

14 Dr. Chen, with all due respect, he has the ability
15 to protect himself. And again, making an argument to lift the
16 stay so that I can get a trial date at an unknown point in the
17 future is not a compelling argument.

18 Those are my findings and conclusions on the Record
19 pursuant to Bankruptcy Rule 7052. The motion's denied, I'll
20 enter an order.

21 Thank you everybody. Have a good day.

22 MR. KIRBY: Your Honor, may I inquire? Is it the
23 Court's intention to deny the motion without -- well --

24 (Hearing adjourned 5:19 p.m.)

25 * * * * *

I certify that the foregoing is a correct transcript to the best of my ability due to the condition of the electronic sound recording of the ZOOM/video/telephonic proceedings in the above-entitled matter.

/S./ MARY D. HENRY

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